

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 19 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0238-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JEREMY PATRICK KELLY,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20072205

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Patrick C. Coppen

Tucson
Attorney for Petitioner

ECKERSTROM, Presiding Judge.

¶1 Petitioner Jeremy Kelly seeks review of the trial court’s order summarily denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he alleged ineffective assistance of trial counsel and sentencing error. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Kelly has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Kelly was convicted of fraudulent scheme and artifice. The court imposed an enhanced, presumptive sentence of 9.25 years. Kelly initiated post-conviction relief proceedings, arguing in his petition¹ that trial counsel had been ineffective in failing to argue for a partially mitigated sentence or to present “additional materials or information” that “may have convinced the Sentencing Court to give [him] a partially mitigated term,” which he maintained may have been available under the terms of his plea agreement. He also asserted the court “should have imposed a partially mitigated sentence” or “found that the sentence required to be imposed was

¹Kelly filed his notice of post-conviction relief in December 2007, and the trial court appointed counsel in May 2008. The court then granted defense counsel numerous time extensions before the petition for post-conviction relief was finally filed in October 2010. Although the court has discretion in granting extensions of time under Rule 32.4(c), the rule provides that successive extensions should only be granted “upon a showing of extraordinary circumstances.” It is difficult to comprehend how such circumstances could have arisen on more than a dozen occasions, spanning more than two years. We encourage defense counsel and the trial court to be mindful of the amount of time allowed to pass while a defendant awaits resolution of his or her petition in custody. *Cf. State v. Watton*, 164 Ariz. 323, 328, 793 P.2d 80, 85 (1990) (“Post-conviction relief provides a simple and efficient means of inquiry into a defendant’s claim that the conviction or sentence was obtained in disregard of fundamental fairness, which is essential to our concept of justice.”).

excessive under the circumstances entitling [him to] an early application for clemency” under A.R.S. § 13-603(L).

¶3 In a thorough, well-reasoned minute entry, the trial court identified all of the claims Kelly had raised and resolved them correctly and in a manner permitting this court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court correctly concluded the claims raised were not colorable. No purpose would be served by restating the court’s ruling in its entirety, and we therefore adopt it. *See id.* Thus, although we grant the petition for review, we deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge